

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1374 of 1996

in

SPECIAL CIVIL APPLICATION No 10071 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH A PANDYA

Versus

RAMABHAI JOITARAM PATEL

Appearance:

MR PK JANI for Appellants

MR BA VAISHNAV for Respondent No. 1

MR SK PATEL, AGP for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4, 5

CORAM : MR.JUSTICE J.M.PANCHAL

and

Date of decision: 14/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated November 6, 1996, rendered by the learned Single Judge, in Special Civil Application No. 10071/95, by which resolution of no confidence dated November 14, 1995 passed against the respondent no.1 is set aside.

2. The respondent no.1 i.e. Rambhai Joitaram Patel was elected as Sarpanch of Village Panchayat, Satlasana, Taluka : Kheralu, District : Mehsana in the year 1991. The total number of seats of Village Panchayat is 15, but at the relevant time, 2 seats were vacant. A no confidence motion moved against the respondent no.1 was received by the Panchayat on November 3, 1995 and, therefore, a meeting was called on November 14, 1995 to consider the said resolution. The meeting which was convened on November 14, 1995 was attended by 13 members including the respondent no.1. At the meeting, the motion of no confidence was passed, as 9 members voted in favour of the said motion; whereas 4 members voted against the motion. Thereupon, respondent no.1 preferred Appeal No.37/95 before the District Panchayat and the appellate committee had directed the parties to maintain status-quo by an order dated November 16, 1995, pursuant to which respondent no.1 continued in the office. One Jayantibhai M. Parmar, a member of the Village Panchayat, who is respondent no.4 in the appeal, preferred revision application before the State Government under section 259 of the Panchayats Act and challenged order dated November 16, 1995 passed by the appellate committee of District Panchayat. On November 21, 1995, the State Government granted stay of implementation of order passed by the appellate committee which was to be operative till November 27, 1995. Feeling aggrieved by the said order of the Government, respondent no.1 preferred Special Civil Application No. 10071/95 and challenged the legality of the same. The main ground of challenge in the petition was that the motion was not carried by the required majority, as according to the respondent no.1, two thirds of the total strength of 15 would be 10; whereas only 9 members had voted in favour of the motion. The learned Single Judge on interpretation of Section 56(2) of the Panchayats Act

took the view that two thirds of total number of members would be 10 and as only 9 members have voted in favour of the resolution, the same was void and liable to be set aside. In view of this conclusion, the learned Single Judge allowed the petition by the impugned judgment, which has given rise to the present petition.

3. In Manubhai F.Patel Vs. State of Gujarat, 2000(1) GLH 423, the Division Bench of this Court has held that the view taken by the learned Single Judge in the judgment which is impugned in the present appeal is not a good law. The Division Bench, on interpretation of the provisions of section 56 of the Panchayats Act has held that the total number of members cannot be construed to mean whole number and the number of vacancies which are not filled in, cannot be taken into consideration while interpreting the term 'total number of members of the Panchayat' as appearing in section 56 of the Act. In view of the principle laid down by the Division Bench in M.F.Patel's case (supra), we are of the opinion that the impugned judgment cannot be sustained and is liable to be set aside. For the reasons which are stated in the decision which is rendered in M.F.Patel's case (supra), the appeal will have to be accepted.

For the foregoing reasons, the appeal succeeds. The judgment dated November 6, 1996 rendered by the learned Single Judge, in Special Civil Application No. 10071/95 is set aside and quashed. Special Civil Application No. 10071/95 is dismissed and rule is discharged in the said petition, with no order as to costs. The appeal is accordingly allowed, with no order as to costs.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)

(patel)